HIGH COURT OF MADHYA PRADESH
BENCH GWALIOR

SB : Justice G.S. Ahluwalia

Criminal Appeal No. 6426/2017
Rakesh Garg
Vs.
State of Madhya Pradesh

Criminal Appeal No. 124/2018
Vinod Singh Yadav
Vs.
State of Madhya Pradesh

Criminal Appeal No. 181/2018
Vinod Verma
Vs.
State of Madhya Pradesh

Criminal Appeal No. 259/2018
Mahendra Singh Chauhan
Vs.
State of Madhya Pradesh

Shri V.D. Sharma, counsel for appellant in Cr.A. No. 6426/2017.
Shri A.K. Jain, counsel for appellant in Cr.A. No. 124/2018.
Shri R.K. Sharma, senior counsel with Shri V.K. Agarwal, counsel for appellant in Cr.A. No. 181/2018.
Shri S.K. Sharma, counsel for appellant in Cr.A. No. 259/2018.

Shri S.S. Rajput, Public Prosecutor for the respondents/State.

Date of hearing : 03/05/2019
Date of judgment : 10/05/2019
Whether approved for reporting : Yes

J U D G M E N T
(Passed on 10/05/2019)

By this Common Judgment, the Cr.A. No. 6426 of 2017 filed by Rakesh Garg, Cr.A. No. 124 of 2018 filed by Vinod Singh Yadav,

Cr.A. No. 181 of 2018 filed by Vinod Verma and Cr.A. No. 259 of 2018 filed by Mahendra Singh Chouhan, shall be decided.

2. These four appeals have been filed against the Judgment and Sentence dated 22-12-2017 passed by VIIth A.S.J., Gwalior in Sessions Trial No. 195 of 2007 by which the appellants have been convicted and sentenced as under :

S. No.	Appellant	Conviction under	Sentence
1	Rakesh Garg	256 of I.P.C.	4 years R.I. and fine of Rs. 5000/- with default imprisonment
2	Vinod Singh Yadav	1. 255 of I.P.C.	1. 5 years R.I. and fine of Rs. 5000/- with default imprisonment.
		2. 256 of I.P.C.	2. 4 years R.I. and fine of Rs. 5000/- with default imprisonment
		3. 257 of I.P.C.	3. 4 years R.I. and fine of Rs. 5000/- with default imprisonment
		4. 258 of I.P.C.	4. 4 years R.I. and fine of Rs. 5000/- with default imprisonment
		5. 259 of I.P.C.	5. 4 years R.I. and fine of Rs. 5000/- with default imprisonment
		6. 261 of I.P.C.	6. 2 years R.I. and fine of Rs. 2000/- with default imprisonment
		7. 420 of I.P.C.	7. 4 years R.I. and fine of Rs. 5000/- with default imprisonment

		8. 467 of I.P.C.	8. 5 years R.I. and fine of Rs. 5000/- with default imprisonment
		9. 468 of I.P.C.	9. 4 years R.I. and fine of Rs. 5000/- with default imprisonment
		10. 471 of I.P.C.	10. 5 years R.I. and fine of Rs. 5000/- with default imprisonment
		11. 472 of I.P.C.	11. 5 years R.I. and fine of Rs. 5000/- with default imprisonment
		12. S. 69 of Indian Stamp Paper Act read with Rule 39 of M.P Stamp Paper Rules	12. Fine of Rs. 500/-
3	Vinod Verma	1. 255 of I.P.C.	1. 5 years R.I. and fine of Rs. 5000/- with default imprisonment.
		2. 256 of I.P.C.	2. 4 years R.I. and fine of Rs. 5000/- with default imprisonment
		3. 257 of I.P.C.	3. 4 years R.I. and fine of Rs. 5000/- with default imprisonment
		4. 258 of I.P.C.	4. 4 years R.I. and fine of Rs. 5000/- with default imprisonment
		5. 259 of I.P.C.	5. 4 years R.I. and fine of Rs. 5000/- with default imprisonment
		6. 261 of I.P.C.	6. 2 years R.I. and fine of Rs. 2000/- with default imprisonment

		7. 420 of I.P.C.	7. 4 years R.I. and fine of Rs. 5000/- with default imprisonment
		8. 467 of I.P.C.	8. 5 years R.I. and fine of Rs. 5000/- with default imprisonment
		9. 468 of I.P.C.	9. 4 years R.I. and fine of Rs. 5000/- with default imprisonment
		10. 471 of I.P.C.	10. 5 years R.I. and fine of Rs. 5000/- with default imprisonment
		11. 472 of I.P.C.	11. 5 years R.I. and fine of Rs. 5000/- with default imprisonment
		12. S. 69 of Indian Stamp Paper Act read with Rule 39 of M.P Stamp Paper Rules	12. Fine of Rs. 500/-
4	Mahendra Singh Chauhan	1. 255 of I.P.C.	1. 5 years R.I. and fine of Rs. 5000/- with default imprisonment.
		2. 256 of I.P.C.	2. 4 years R.I. and fine of Rs. 5000/- with default imprisonment
		3. 257 of I.P.C.	3. 4 years R.I. and fine of Rs. 5000/- with default imprisonment
		4. 258 of I.P.C.	4. 4 years R.I. and fine of Rs. 5000/- with default imprisonment
		5. 259 of I.P.C.	5. 4 years R.I. and fine of Rs. 5000/- with default imprisonment
		6. 261 of I.P.C.	6. 2 years R.I. and fine

			of Rs. 2000/- with default imprisonment
		7. 420 of I.P.C.	7. 4 years R.I. and fine of Rs. 5000/- with default imprisonment
		8. 467 of I.P.C.	8. 5 years R.I. and fine of Rs. 5000/- with default imprisonment
		9. 468 of I.P.C.	9. 4 years R.I. and fine of Rs. 5000/- with default imprisonment
		10. 471 of I.P.C.	10. 5 years R.I. and fine of Rs. 5000/- with default imprisonment
		11. 472 of I.P.C.	11. 5 years R.I. and fine of Rs. 5000/- with default imprisonment
		12. S. 69 of Indian Stamp Paper Act read with Rule 39 of M.P Stamp Paper Rules	12. Fine of Rs. 500/-

3. The accused Vimal Singh, Dharmendra Shrivas and Jagdish Garg were absconding and therefore, charge sheet under Section 299 of Cr.P.C. was filed against the above mentioned accused persons.

4. The necessary facts for the disposal of the present appeal in short are that the Registry of the High Court, Gwalior Bench, suspected that some stamp papers which have been filed by way of Court fee appears to be counterfeited. Therefore, the Treasury Office, was requested to verify the same. On verification, the said stamp papers were found to be counterfeited. Therefore, a request was made

to the Collector, Gwalior to look into the matter. The Add. Collector, Gwalior, in its turn wrote a letter to the Superintendent of Police for investigation, and the Superintendent of Police, Gwalior, forwarded the matter to the Police Station University, which was received by the S.H.O., on 19-3-2007, containing the allegations that it appears that Vinod Singh Yadav, the Stamp Vendor, is most probably involved in making of forged stamp papers. Therefore, the police was directed to look into the matter and if so required, to lodge the F.I.R. and inform the Principal Registrar of this High Court.

5. Along with the letter, a photo copy of enquiry report submitted by the Treasury Office, Gwalior was also annexed. A report was received that the stamp papers sold by Vinod Singh Yadav bearing No. 017977, 017893,017958 to 017969 and which were annexed with S.A. No. 1366/07, S.A. No. 199/07, F.A. No. 32/07 by way of Court fee, appears to be different from the original stamp papers. As per the record of the Treasury, the said Stamp Papers were also not sold to Vinod Singh Yadav. Accordingly, the police registered the F.I.R. in crime No. 65/2007 against Vinod Singh Yadav, for offence under Sections 420,467, 468, 471, 472, 255, 258,259,260 of I.P.C. and under Section 69 of Indian Stamp Paper Act read with Rule 39 of M.P. Stamp Paper Rules, 1942. The police, during investigation, arrested the remaining appellants and seized incriminating material including Counterfeit stamp papers. After completing the investigation, the

police filed the charge sheet against the appellants. Three accused persons were absconding therefore, proceedings under Section 299 of Cr.P.C. was taken against the absconding accused persons.

6. The Trial Court by order dated 9-3-2010, framed charges for offence under Sections 255,256,257,258, 259, 261, 420, 467, 468,471, 472 of I.P.C. and under Section 69 of Indian Stamp Paper Act read with Rule 39 of M.P. Stamp Paper Rules, 1942.

7. The appellants abjured their guilt and pleaded not guilty.

8. The prosecution, in order to prove its case, examined Rajendra Prasad Bhatnagar (P.W.1), Amrit Minj (P.W.2), P.P. Shrivastava (P.W.3), Rakesh Shrivastava (P.W.4), Pramod Saxena (P.W.5), Rampal (P.W.6), Neeraj Shrivastava (P.W.7), R.S. Ahirwar (P.W.8), Ahsan Qureshi (P.W.9), Udai Pratap singh (P.W.10), Harish Kumar Gurnani (P.W.11), Mukesh Sharma (P.W.12), Poonam Soni (P.W.13), R.N. Gupta (P.W.14), Hotam Singh (P.W.15), V.D. Purdare (P.W.16), M. Mazumdar (P.W.17), Machal Singh (P.W.18), M. Fraklin (P.W.19), Jagdish Sharma (P.W.20), Badan Singh Baghel (P.W.21), Mohan Krishna Verma (P.W.22), Laxmandas Agrawal (P.W.23), Rajeev Sharma (P.W.24), Virendra Kumar Garud (P.W.25), Aditya Singh Tomar (P.W.26), Rakesh Gupta (P.W.27), P.B. Kamlaskar (P.W.28), Umesh Mishra (P.W.29) and N.K. Upadhayaya (P.W.30).

9. The appellants, examined Vinod Kumar Verma (D.W.1/Appellant himself), and Mohanlal Agrawal (D.W.2).

10. The Trial Court by judgment and sentence dated 22-12-2017, passed in S.T. No. 105/2007, has convicted the appellants for the offence(s) mentioned above and has awarded the sentence as mentioned above.

11. Challenging the judgment and conviction recorded by the Trial Court, it is submitted by the Counsel for the appellants Vinod Verma, Mahendra Singh Chauhan, and Rakesh Garg, that the only incriminating evidence against them is the seizure of so called counterfeit stamp papers and seals, whereas it is submitted by the Counsel for the appellant Vinod Singh Yadav, that nothing was seized from him.

12. It is next contended by all the Counsels that the independent witnesses of seizure have not supported the prosecution case and no Rojnamcha Sanha was filed to show that the investigating officer had ever gone to the houses of the appellants for effecting seizure. Even the investigating officer was not in a position to give the description of the houses of the appellants. Further, the appellants were not in exclusive possession of their houses, as their family members were also residing in the same house. The record of Malkhana has not been produced. Further V.P. Kamlaskar (P.W.28) has failed to establish that the stamp papers seized from the possession of appellant Vinod Verma and Mahendra Singh Chauhan were fake/counterfeit. Further, the investigation has acted in a malafide manner and they have picked and

choose because Ms. Poonam Soni, Clerk of Shri M.P.S. Raghuvanshi Advocate, and Shri Neeraj Shrivastava, Advocate have not been made an accused.

13. *Per contra*, it is submitted by the Counsel for the State that it was found that certain fake stamp papers were used for payment of Court Fee in three Appeals, therefore, the matter was referred to the Treasury. A report was received that the stamp papers which were filed by way of Court Fee, were never issued to Stamp Vendor Vinod Singh Yadav and they were fake. Further, no explanation has been given by the appellants Vinod Verma and Mahendra Singh Chauhan, as to how they came in possession of the fake stamp papers. So far as Vinod Singh Yadav is concerned, the fake stamp papers were sold by him to Ms. Poonam Soni and Neeraj Shrivastava Advocate. Further, Rakesh Garg was found in possession of a fake seal. Thus, the Court below after meticulously marshalling the evidence available on record, has recorded the conviction of the appellants. Further, the prosecution has established beyond reasonable doubt that the stamp papers seized from the possession of the appellants as well as found in Court record were counterfeit.

14. Heard the learned Counsel for the parties.

15. According to the prosecution story, during the checking of judicial record, the Registry of the High Court, Gwalior Bench, suspected that in some of the cases, the stamp papers appears to be

suspicious. Therefore, the Treasury Office, Moti Mahal, Gwalior was asked to examine the genuiness of the stamp papers. After receiving the report from the Treasury Officer, by letter dated 19-3-2007, Ex. P.22, the then Collector, Gwalior was requested to take necessary action in the matter according to law under intimation of this Registry. Accordingly, the complaint was forwarded to the Superintendent of Police by the office of Collector, Gwalior by letter dated 19-3-2007, Ex. P.21. Resultantly, the F.I.R., Ex. P.23 was lodged on 19-3-2007 for offence under Sections 420,467,468,471,472,255,258,259 and 260 of I.P.C. and also under Section 69 of Indian Stamp Paper Act, 1899 and Rule 39 of M.P. Stamp Paper Rule, 1942.

Seizure of 7 Counterfeits/fake stamp papers from the possession of appellant Vinod Verma

16. According to the prosecution story, the appellant Vinod Verma, made a confessional statement, Ex. P.7 and accordingly, 7 counterfeit Stamp Papers were seized from his possession vide seizure memo Ex. P.11. The seizure was made in the presence of independent witnesses namely Rakesh Shrivastava (P.W.4) and Pramod Saxena (P.W.5).

17. However, in the Trial, Rakesh Shrivastava (P.W.4) and Pramod Saxena (P.W.5) didnot support the prosecution case, with regard to the place of seizure and were declared hostile for limited purposes. It is submitted that therefore, the seizure of 7 Counterfeit Stamp papers from the possession of the appellant Vinod Verma, has not been

proved beyond reasonable doubt, as the evidence of N.K. Upadhyaya, I.O. (P.W.30), is not reliable.

18. Considered the submissions made by the Counsel for the appellant Vinod Verma.

19. Independent witnesses of seizure namely Rakesh Shrivastava (P.W.4) and Pramod Saxena (P.W.5) have not supported the prosecution case and they have turned hostile. They have stated that the stamp papers and seals were seized in the Police Station, therefore, they were declared hostile for limited purposes and were cross-examined by the Public Prosecutor. However, the question for determination is that even if the independent witnesses have turned hostile, then whether the evidence of police personals can be relied upon or not?

20. The Supreme Court in the case of **Madhu Vs. State of Karnataka** reported in **(2014) 12 SCC 419** has held as under :

> **"17.** The learned counsel for the appellants has vehemently argued that in some of the recoveries, though a large number of people were available, but only police personnel were made recovery witnesses. Thus, the whole prosecution case becomes doubtful.
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> **18.** The term "witness" means a person who is capable of providing information by way of deposing as regards relevant facts, via an oral statement, or a statement in writing, made or given in court, or otherwise. In *Pradeep Narayan Madgaonkar* v. *State of Maharashtra* this Court dealt with the issue of the requirement of the examination of an independent witness, and whether the evidence of a police witness requires

> corroboration. The Court held that though the same must be subject to strict scrutiny, however, the evidence of police officials cannot be discarded merely on the ground that they belong to the police force and are either interested in the investigation or in the prosecution. However, as far as possible the corroboration of their evidence on material particulars should be sought. (See also *Paras Ram* v. *State of Haryana*; *Balbir Singh* v. *State*; *Kalpnath Rai* v. *State*; *M. Prabhulal* v. *Directorate of Revenue Intelligence* and *Ravindran* v. *Supt. of Customs*.)
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> **19.** Thus, a witness is normally considered to be independent unless he springs from sources which are likely to be tainted and this usually means that the said witness has cause to bear such enmity against the accused so as to implicate him falsely. In view of the above, there can be no prohibition to the effect that a policeman cannot be a witness or that his deposition cannot be relied upon if it inspires confidence."

21. The Supreme Court in the case of **Govindaraju Vs. State** reported in **(2012) 4 SCC 722** has held as under :-

> **"67.** We are certainly not indicating that despite all this, the statement of the police officer for recovery and other matters could not be believed and form the basis of conviction but where the statement of such witness is not reliable and does not inspire confidence, then the accused would be entitled to the benefit of doubt in accordance with law. Mere absence of independent witnesses when the investigating officer recorded the statement of the accused and the article was recovered pursuant thereto, is not a sufficient ground to discard the evidence of the police officer relating to recovery at the instance of the accused. [See *State (Govt. of NCT of Delhi)* v. *Sunil*] Similar would be the situation where the attesting witnesses turn hostile, but where the statement of the police officer itself is unreliable then it may be difficult for the court to accept the

recovery as lawful and legally admissible. The official acts of the police should be presumed to be regularly performed and there is no occasion for the courts to begin with initial distrust to discard such evidence."

22. The Supreme Court in the case of **Baldev Singh v. State of Haryana,** reported in **(2015) 17 SCC 554** has held as under :

> **"10.** There is no legal proposition that evidence of police officials unless supported by independent evidence is unworthy of acceptance. Evidence of police witnesses cannot be discarded merely on the ground that they belong to police force and interested in the investigation and their desire to see the success of the case. Prudence however requires that the evidence of police officials who are interested in the outcome of the result of the case needs to be carefully scrutinised and independently appreciated. Mere fact that they are police officials does not by itself give rise to any doubt about their creditworthiness.
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> **11.** Observing that no infirmity is attached to the testimony of police officials merely because they belong to police force and that conviction can be based on the testimony of police officials in *Girja Prasad* v. *State of M.P.*, it was held as under: (SCC pp. 632-33, paras 25-27)
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> "*25*. In our judgment, the above proposition does not lay down correct law on the point. It is well settled that credibility of witness has to be tested on the touchstone of truthfulness and trustworthiness. It is quite possible that in a given case, a court of law may not base conviction solely on the evidence of the complainant or a police official but it is not the law that police witnesses should not be relied upon and their evidence cannot be accepted unless it is corroborated in material particulars by other independent evidence. The presumption that every person acts honestly applies as much in favour of a police official as any other person. No infirmity attaches to the testimony of police

officials merely because they belong to police force. There is no rule of law which lays down that no conviction can be recorded on the testimony of police officials even if such evidence is otherwise reliable and trustworthy. The rule of prudence *may* require more careful scrutiny of their evidence. But, if the court is convinced that what was stated by a witness has a ring of truth, conviction can be based on such evidence.

26. It is not necessary to refer to various decisions on the point. We may, however, state that before more than half-a-century, in *Aher Raja Khima* v. *State of Saurashtra*, Venkatarama Ayyar, J. stated: (AIR p. 230, para 40)

'*40*. … *The presumption that a person acts honestly applies as much in favour of a police officer as of other persons, and it is not judicial approach to distrust and suspect him without good grounds therefor.* Such an attitude could do neither credit to the magistracy nor good to the public. It can only run down the prestige of the police administration.'

27. In *Tahir* v. *State (Delhi)*, dealing with a similar question, Dr A.S. Anand, J. (as His Lordship then was) stated: (SCC p. 341, para 6)

'*6*. … Where the evidence of the police officials, after careful scrutiny, inspires confidence and is found to be trustworthy and reliable, it can form basis of conviction and the absence of some independent witness of the locality to lend corroboration to their evidence, does not in any way affect the creditworthiness of the prosecution case."

(emphasis in original)

23. The Supreme Court in the case of **Girja Prasad v. State of M.P.,** reported in **(2007) 7 SCC 625** has held as under :

> **"25.** In our judgment, the above proposition does not lay down correct law on the point. It is well settled that credibility of witness has to be tested on the touchstone of truthfulness and trustworthiness. It is quite possible that in a given case, a court of law may not base conviction solely on the evidence of the complainant or a police official but it is not the law that police witnesses should not be relied upon and their evidence cannot be accepted unless it is corroborated in material particulars by other independent evidence. The presumption that every person acts honestly applies as much in favour of a police official as any other person. No infirmity attaches to the testimony of police officials merely because they belong to police force. There is no rule of law which lays down that no conviction can be recorded on the testimony of police officials even if such evidence is otherwise reliable and trustworthy. The rule of prudence *may* require more careful scrutiny of their evidence. But, if the court is convinced that what was stated by a witness has a ring of truth, conviction can be based on such evidence.

24. Thus, it is clear that if the evidence of Police personal is found to be reliable, then the case of the prosecution cannot be thrown overboard, merely by saying that the independent witnesses of seizure have not supported the prosecution case.

25. Now, the next question for determination is that whether the evidence of N.K. Upadhayaya (P.W.30) is reliable or not?

26. Challenging the verasity of the evidence of N.K. Upadhyaya (P.W.30), it is submitted by the Counsel for the appellant Vinod Verma, that the police has not filed the rojnamcha sanha to prove that the Investigating Officer had ever gone to the house of the appellant

Vinod Verma. N.K. Upadhyaya (P.W.30), has failed to even describe the location of the house. By referring to the paragraph 13 of the cross examination of N.K. Upadhayaya (P.W.30), it is submitted by the Counsel for the appellant Vinod Verma, that this Witness could not state that at which place, the appellant Vinod Verma was arrested. Similarly, by referring to para 18 of his cross examination, it is submitted by the Counsel for the appellant Vinod Verma, that the investigating officer, has admitted that when he reached the house of the appellant, it was open and the members of the family of the appellant Vinod Verma were residing. Thus, it is submitted that the appellant Vinod Verma was not in exclusive possession of the house. Further it is submitted that the investigating officer could not say that whether the house of Vinod Verma was a single storey or was a multi storey house. He also could not point out that from which place, the appellant Vinod Verma had taken out the counterfeit stamp papers. He further admitted that he had not taken the signatures of the appellant Vinod Verma, on the stamp papers which were seized from his possession. He has further admitted in para 19 that a Malkhana register is maintained in the Police Station, but the same was not produced. Thus, it is submitted that the prosecution has failed to prove that the counterfeit stamp papers were seized from the possession of the appellant Vinod Verma.

27. Considered the submissions made by the Counsel for the

appellant Vinod Verma. It is not the case of the appellant Vinod Verma, that apart from his family members, any other outsider is also residing in his house. It is the case of the prosecution, that the appellant Vinod Verma had taken out the counterfeit stamp papers from his house. Thus, it is clear that the appellant Vinod Verma was aware of the fact that, where the counterfeit stamp papers have been kept. It is not the case of the appellant Vinod Verma, that any other family member was involved. Thus, where the house is occupied by the family members of the accused, and the accused after making confessional statement, takes out the counterfeit stamp papers from his house, then it can be inferred that it was the appellant Vinod Verma, who was in exclusive possession of the counterfeit stamp papers, because he had an exclusive knowledge about the place where the counterfeit stamp papers were kept. So far as the inability of this witness to depose that whether the house of the appellant Vinod Verma was single storey or double storey, in the considered opinion of this Court, no adverse inference can be drawn against the prosecution. The seizure was made on 20-3-2007, whereas this witness was examined on 7-9-2017 i.e., after more than 10 years. With the passage of time, the memory of a witness is liable to fade, and under these circumstances, this Court is of the considered opinion, that no advantage to the appellant Vinod Verma can be given, if the witness was unable to answer that whether the house of Vinod Verma was

single storey or double storey. Further a suggestion has been given by the appellant himself that when this witness reached the house of appellant, it was open and there were other members of family. It is next contended by the Counsel for the appellant, that N.K. Upadhayaya (P.W.30) has merely stated in his examination in chief, that the confessional statement made by the appellant Vinod Verma is Ex. P.7, whereas he should have narrated the entire facts, which were disclosed by the appellant Vinod Verma in his confessional statement. Once again, it is clarified that since, the evidence of this witness was recorded after more than 10 years of investigation, therefore, no adverse inference can be drawn against the prosecution. Further, the appellant Vinod Verma didnot raise any objection at the time, when the confessional statement was being marked as exhibit.

28. The Supreme Court in the case of **R.V.E. Venkatachala Gounder Vs. Arulmigu Viswesaraswami & V.P. Temple** reported in **(2003) 8 SCC 752** has held as under :

> **"20.** The learned counsel for the defendant-respondent has relied on *Roman Catholic Mission* v. *State of Madras* in support of his submission that a document not admissible in evidence, though brought on record, has to be excluded from consideration. We do not have any dispute with the proposition of law so laid down in the abovesaid case. However, the present one is a case which calls for the correct position of law being made precise. Ordinarily, an objection to the admissibility of evidence should be taken when it is tendered and not subsequently. The objections as to admissibility of documents in

evidence may be classified into two classes: (*i*) an objection that the document which is sought to be proved is *itself inadmissible* in evidence; and (*ii*) where the objection does not dispute the admissibility of the document in evidence but is directed towards the *mode of proof* alleging the same to be irregular or insufficient. In the first case, merely because a document has been marked as "an exhibit", an objection as to its admissibility is not excluded and is available to be raised even at a later stage or even in appeal or revision. In the latter case, the objection should be taken when the evidence is tendered and once the document has been admitted in evidence and marked as an exhibit, the objection that it should not have been admitted in evidence or that the mode adopted for proving the document is irregular cannot be allowed to be raised at any stage subsequent to the marking of the document as an exhibit. The latter proposition is a rule of fair play. The crucial test is whether an objection, if taken at the appropriate point of time, would have enabled the party tendering the evidence to cure the defect and resort to such mode of proof as would be regular. The omission to object becomes fatal because by his failure the party entitled to object allows the party tendering the evidence to act on an assumption that the opposite party is not serious about the mode of proof. On the other hand, a prompt objection does not prejudice the party tendering the evidence, for two reasons: firstly, it enables the court to apply its mind and pronounce its decision on the question of admissibility then and there; and secondly, in the event of finding of the court on the mode of proof sought to be adopted going against the party tendering the evidence, the opportunity of seeking indulgence of the court for permitting a regular mode or method of proof and thereby removing the objection raised by the opposite party, is available to the party leading the evidence. Such practice and procedure is fair to both the parties. Out of the two types of objections, referred to hereinabove, in the latter case, failure to raise a prompt and timely

> objection amounts to waiver of the necessity for insisting on formal proof of a document, the document itself which is sought to be proved being admissible in evidence. In the first case, acquiescence would be no bar to raising the objection in a superior court."

29. Thus, where the admissibility of a document is not in a question, but merely its mode of proof is challenged, then the said objection must be taken at the time of marking of said document as exhibit because in such a situation, the opposite party shall have an opportunity to correct the mode of proof. Marking of exhibit is a procedure and the procedural rights can be waived by any party. Thus, if no objection was raised by the accused at the time when the confessional statement of the appellant Vinod Verma was being marked as exhibit, then in the considered opinion of this Court, no adverse inference can be drawn against the prosecution, as the appellants had waived their right to challenge the mode of proof. Further so far as the question of non-filing of Rojnamcha Sanha is concerned, it is well established principle of law that defective investigation would not discard the direct ocular/circumstancial evidence.

30. The appellant Vinod Verma, has examined himself as Defence Witness No.1 and has stated that he is an Advocate by profession and is a practicising lawyer. He was called by the police personals at Police Station University. N.K. Upadhayaya (P.W.30) had never

visited his house nor any stamp paper was seized from his possession at his house and the entire proceedings against him is forged. However, in his evidence, this witness has not stated that no stamp paper was ever seized from his possession. The seizure memo Ex. P.11 bears the signature of this witness which has not been explained by him. Once, an accused has appeared as a witness, then he is required to explain each and every circumstance. When an accused examines himself as a defence witness, then he has to be treated like any other prosecution or defence witness and any admission made by the accused as a defence witness would certainly amount to an admission of incriminating material and his evidence may go against him. It can be safely said that by filing an application under Section 315 of Cr.P.C. to appear as a defence witness, the accused, impliedly waives his rights as an accused and he is liable to suffer the consequences of his action if the statements in his evidence are found to be self-criminative. Once, an accused decides to appear as defence witness, then he enjoys the status of like any other witness and in view of Section 132 of Evidence, he cannot claim any immunity to answer a question. Even leading questions tending to implicate him can also be put in the cross examination. Thus, after having appeared as a defence witness, the entire burden was on the appellant Vinod Verma, to explain all the incriminating circumstances against him. Vinod Verma (D.W.1) has merely stated that the Stamp Papers were not

seized at his house, however, he has not stated that no Stamp paper was seized from him at all. He has merely stated that he was called in the Police Station University but has not stated that he was forced to sign the seizure memo. It is further submitted by the Counsel for the appellant Vinod Verma, that since, the signatures of the appellant Vinod Verma were obtained on the seizure memo Ex. P.11, therefore, it is hit by Section 162 of Cr.P.C., and even if the appellant as defence witness has not explained his signatures on the seizure memo, Ex. P.11, it cannot be said that the appellant has failed to explain an incriminating circumstance. Considered the submission made by the Counsel for the appellant Vinod Verma.

31. Section 162 of Cr.P.C., reads as under :

> **"162. Statements to police not to be signed: Use of statements in evidence**.— (1) No statement made by any person to a police officer in the course of an investigation under this Chapter, shall, if reduced to writing, be signed by the person making it; nor shall any such statement or any record thereof, whether in a police diary or otherwise, or any part of such statement or record, be used for any purpose, save as hereinafter provided, at any inquiry or trial in respect of any offence under investigation at the time when such statement was made:
>
> Provided that when any witness is called for the prosecution in such inquiry or trial whose statement has been reduced into writing as aforesaid, any part of his statement, if duly proved, may be used by the accused, and with the permission of the Court, by the prosecution, to contradict such witness in the manner provided by Section 145 of the Indian Evidence Act, 1872 (1 of 1872); and when any part of such statement is

> so used, any part thereof may also be used in the re-examination of such witness, but for the purpose only of explaining any matter referred to in his cross-examination.
>
> (2) Nothing in this section shall be deemed to apply to any statement falling within the provisions of clause (1) of Section 32 of the Indian Evidence Act, 1872 (1 of 1872), or to affect the provisions of Section 27 of that Act.
>
> *Explanation*.—An omission to state a fact or circumstance in the statement referred to in sub-section (1) may amount to contradiction if the same appears to be significant and otherwise relevant having regard to the context in which such omission occurs and whether any omission amounts to a contradiction in the particular context shall be a question of fact.
>
> (Underline applied)

32. Thus, from the plain reading of Section 162(2) of Cr.P.C., it is clear that the provisions of this Section have not been made applicable to the proceedings under Section 32 of Evidence Act or Section 27 of Evidence Act. Therefore, if the investigating officer had obtained the signatures of the appellant Vinod Verma, on the seizure-memo, Ex. P.11, then it cannot be said that it would hit by Section 162 of Cr.P.C.

33. The Supreme Court in the case of **State of Rajasthan Vs. Teja Ram** reported in **(1999) 3 SCC 507** has held as under :

> **"28.** Learned counsel in this context invited our attention to one step which PW 21 (investigating officer) had adopted while preparing the seizure-memos Ex. P-3 and Ex. P-4. He obtained the signature of the accused concerned in both the seizure-memos. According to the learned counsel, the aforesaid action of the investigating officer was illegal and it has vitiated the seizure. He invited our attention to Section

162(1) of the Code which prohibits collecting of signature of the person whose statement was reduced to writing during interrogation. The material words in the sub-section are these:

> "162. (1) No statement made by any person to a police officer in the course of an investigation under this Chapter, shall, if reduced to writing, be signed by the person making it;"

No doubt the aforesaid prohibition is in peremptory terms. It is more a direction to the investigating officer than to the court because the policy underlying the rule is to keep witnesses free to testify in court unhampered by anything which the police claim to have elicited from them. (*Tahsildar Singh* v. *State of U.P.* and *Razik Ram* v. *Jaswant Singh Chouhan*.) But if any investigating officer, ignorant of the said provision, secures the signature of the person concerned in the statement, it does not mean that the witness's testimony in the court would thereby become contaminated or vitiated. The court will only reassure the witness that he is not bound by such statement albeit his signature finding a place thereon.

29. That apart, the prohibition contained in sub-section (1) of Section 162 is not applicable to any proceedings made as per Section 27 of the Evidence Act, 1872. It is clearly provided in sub-section (2) of Section 162 which reads thus:

> "Nothing in this section shall be deemed to apply to any statement falling within the provisions of clause (1) of Section 32 of the Indian Evidence Act, 1872 (1 of 1872), or to affect the provisions of Section 27 of that Act."

30. The resultant position is that the investigating officer is not obliged to obtain the signature of an accused in any statement attributed to him while preparing seizure-memo for the recovery of any article covered by Section 27 of the Evidence Act. But if any signature has been obtained by an investigating officer, there is nothing wrong or illegal about it. Hence, we cannot find any force in the contention of the

learned counsel for the accused that the signatures of the accused in Exs. P-3 and P-4 seizure-memos would vitiate the evidence regarding recovery of the axes.

34. Thus, it is held that after appearing as a defence witness, the appellant Vinod Verma, lost all his rights available to an accused and he cannot claim the privilege of maintaining silence and therefore, failure on his part to explain his signatures on the seizure-memo, Ex. P.11, would certainly go against him.

35. Therefore, in the considered opinion of this Court, the prosecution has established beyond reasonable doubt that 7 stamp papers were seized from the possession of the appellant Vinod Verma, by seizure-memo Ex. P.11.

Seizure of 5 Counterfeit Stamp Papers and three seals from the possession of Mahendra Singh Chauhan

36. As per the prosecution story, on confessional statement of the appellant Mahendra Singh Chauhan, Ex. P.9, 5 counterfeit stamp papers and three seals of Vinod Singh Yadav, were seized from the possession of the appellant Mahendra Singh Chauhan vide seizure-memo, Ex. P.10. Rakesh Shrivastava (P.W.4) and Pramod Saxena (P.W.5) are the seizure witnesses, but they have stated that the stamp papers and seals were seized in the police station and therefore, they were declared hostile for limited purposes and were cross examined by the Public Prosecutor.

37. To challenge the seizure of 5 counterfeit stamp papers and 3

seals, the Counsel for the appellant Mahendra Singh Chauhan, submitted the similar arguments, which were advanced by the Counsel for the appellant Vinod Verma. The only distinction between the case of the appellant Vinod Verma and Mahendra Singh Chauhan is that Mahendra Singh Chauhan didnot appear as a defence witness.

38. By referring to para 14 of the evidence of N.K. Upadhayaya (P.W.30), it is submitted by the Counsel for the appellant Mahendra Singh Yadav, that he was arrested on 20-3-2007 at about 17:25, Ex.P.4, whereas the confessional statement was recorded at 15:30, thus, it is clear that Mahendra Singh Chauhan was not in custody at the time of recording of confessional statement. Considered the submission made by the Counsel for the appellant Mahendra Singh Chauhan.

39. Section 27 of Evidence Act reads as under :

> **"27. How much of information received from accused may be proved.**—Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved."

40. The word "arrest" and the word "custody" are two different words and denotes two different situations and cannot be clubbed together. The Supreme Court in the case of **Vikram Singh v. State of Punjab** reported in **(2010) 3 SCC 56** has held as under :

"40. In *State of U.P.* v. *Deoman Upadhyaya* this is what a Constitution Bench had to say while examining the scope and applicability of Section 27. The Bench relying on the observations made by the Privy Council in *Pakala Narayana Swami* v. *King Emperor* observed as under: (*Deoman Upadhyaya case*, AIR pp. 1128-29, para 7)

> "*7.* Section 27 of the Evidence Act is one of a group of sections relating to the relevancy of certain forms of admissions made by persons accused of offences. Sections 24 to 30 of the Act deal with admissibility of confessions i.e. of statements made by a person stating or suggesting that he has committed a crime. By Section 24, in a criminal proceeding against a person, a confession made by him is inadmissible if it appears to the court to have been caused by inducement, threat or promise having reference to the charge and proceeding from a person in authority. By Section 25, there is an absolute ban against proof at the trial of a person accused of an offence, of a confession made to a police officer. The ban which is partial under Section 24 and complete under Section 25 applies equally whether or not the person against whom evidence is sought to be led in a criminal trial was at the time of making the confession in custody. For the ban to be effective the person need not have been accused of an offence when he made the confession. The expression, 'accused person' in Section 24 and the expression 'a person accused of any offence' have the same connotation, and describe the person against whom evidence is sought to be led in a criminal proceeding. As observed in *Pakala Narayana Swami* v. *King Emperor*, by the Judicial Committee of the Privy Council: (AIR p. 52)
>
> '… Section 25 covers a confession made to a police officer before any investigation has begun or otherwise not in the course of an investigation.'

The adjectival clause ‘accused of any offence’ is therefore descriptive of the person against whom a confessional statement made by him is declared not provable, and does not predicate a condition of that person at the time of making the statement for the applicability of the ban. Section 26 of the Evidence Act by its first paragraph provides:

> ‘26. *Confession by accused while in custody of police not to be proved against him*.—No confession made by any person whilst he is in the custody of a police officer, unless it be made in the immediate presence of a Magistrate, shall be proved as against such person.’

By this section, a confession made by a person who is in custody is declared not provable unless it is made in the immediate presence of a Magistrate. Whereas Section 25 prohibits proof of a confession made by a person to a police officer whether or not at the time of making the confession, he was in custody, Section 26 prohibits proof of a confession by a person in custody made to any person unless the confession is made in the immediate presence of a Magistrate. Section 27 which is in the form of a proviso states:

> ‘27. *How much of information received from accused may be proved*.—Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.’

The expression, ‘accused of any offence’ in Section 27, as in Section 25, is also descriptive of the person concerned i.e. against a person who is accused of an offence, Section 27 renders provable certain statements made by him while he was in the custody of a police officer. Section 27 is founded on the principle that even though the evidence relating to confessional or other statements made by a person, whilst he is in the custody of a police officer, is tainted and therefore

inadmissible, if the truth of the information given by him is assured by the discovery of a fact, it may be presumed to be untainted and is therefore declared provable insofar as it distinctly relates to the fact thereby discovered. Even though Section 27 is in the form of a proviso to Section 26, the two sections do not necessarily deal with evidence of the same character. The ban imposed by Section 26 is against the proof of confessional statements. Section 27 is concerned with the proof of information whether it amounts to a confession or not, which leads to discovery of facts. By Section 27, even if a fact is deposed to as discovered in consequence of information received, only that much of the information is admissible as distinctly relates to the fact discovered. By Section 26, a confession made in the presence of a Magistrate is made provable in its entirety."

41. Mr Sharan has, however, referred us to Section 46(1) of the Code of Criminal Procedure to argue that till the appellants had been arrested in accordance with the aforesaid provision they could not be said to be in police custody. We see that Section 46 deals with "arrest how made". We are of the opinion that the word "arrest" used in Section 46 relates to a formal arrest whereas Section 27 of the Evidence Act talks about custody of a person accused of an offence. In the present case the appellants were undoubtedly put under formal arrest on 15-2-2005 whereas the recoveries had been made prior to that date but admittedly, also, they were in police custody and accused of an offence at the time of their apprehension on 14-2-2005.

42. Moreover, in the light of the judgment of the Constitution Bench in *Deoman Upadhyaya case* and the observation that the words in Section 27 "accused of any offence" are descriptive of the person making the statement, the submission that this section would be operable only after formal arrest under Section 46(1) of the Code, cannot be accepted. This argument does not merit any further discussion."

41. Thus, it is clear that although the appellant Mahendra Singh Chauhan was formally arrested after the making of confessional statement and recovery, but as he was an accused of an offence and was under custody, therefore, the recovery cannot be said to be bad being contrary to Section 27 of Evidence Act.

42. Vinod Verma and Mahendra Singh Chauhan were arrested on the same day from different places. N.L. Upadhayaya (P.W.30) has stated that the appellant Mahendra Singh Chauhan had produced 5 counterfeit stamp paper and 3 seals from his house.

43. By a detailed discussion, this Court has already come to a conclusion that the evidence of N.K. Upadhayaya (P.W.30) is reliable, and therefore, it is held that the prosecution has succeeded in establishing beyond reasonable doubt, that 5 counterfeit stamp papers and 3 seals were seized from the possession of the appellant Mahendra Singh Chauhan vide seizure-memo, Ex. P.10.

44. It is next contended by the Counsel for the appellants that no seizure was made from the appellant Vinod Verma and Mahendra Singh Chauhan, in the presence of independent witnesses, therefore, the seizure is doubtful.

45. Considered the submissions made by the Counsel for the appellants.

46. It is well established principle of law that non-examination of independent witnesses by the prosecution, would not give any dent to

the prosecution case.

47. The Supreme Court in the case of **Sadhu Saran Singh Vs. State of U.P.** reported in **(2016) 4 SCC 357** has held as under :

> **"29.** As far as the non-examination of any other independent witness is concerned, there is no doubt that the prosecution has not been able to produce any independent witness. But, the prosecution case cannot be doubted on this ground alone. In these days, civilised people are generally insensitive to come forward to give any statement in respect of any criminal offence. Unless it is inevitable, people normally keep away from the court as they find it distressing and stressful. Though this kind of human behaviour is indeed unfortunate, but it is a normal phenomena. We cannot ignore this handicap of the investigating agency in discharging their duty. We cannot derail the entire case on the mere ground of absence of independent witness as long as the evidence of the eyewitness, though interested, is trustworthy."

48. The Supreme Court in the case of **Jodhan Vs. State of M.P.** reported in **(2015) 11 SCC 52** has held as under :

> **"35.** Another limb of submission which has been propounded by Mr Sharma is that the prosecution has deliberately not examined other independent material witnesses who were present at the spot and, therefore, the whole case of prosecution becomes unacceptable. In this context, it would be profitable to refer to what has been held in *State of H.P.* v. *Gian Chand*. In the said case, the three-Judge Bench has opined that: (SCC p. 81, para 14)
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> "*14*. … Non-examination of a material witness is again not a mathematical formula for discarding the weight of the testimony available on record howsoever natural, trustworthy and convincing it may be. The charge of withholding a material witness from the court levelled against the

> prosecution should be examined in the background of the facts and circumstances of each case so as to find whether the witnesses are available for being examined in the court and were yet withheld by the prosecution."
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> It has been further ruled therein that the court is required to first consider and assess the credibility of the evidence available on record and if the court finds that the evidence adduced is worthy of credence, the testimony has to be accepted and acted upon though there may be other witnesses available, who could also have been examined but not examined.
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> **36.** In *Takhaji Hiraji* v. *Thakore Kubersing Chamansing*, it has been opined that if the material witness, who unfolds the genesis of the incident or an essential part of the prosecution case, not convincingly brought to the fore otherwise, or where there is a gap or infirmity in the prosecution case which could have been supplied or made good by examining a witness who though available is not examined, the prosecution case can be termed as suffering from a deficiency and withholding of such a material witness would oblige the court to draw an adverse inference against the prosecution, but if there is an overwhelming evidence available, and which can be placed reliance upon, non-examination of such other witnesses may not be material. Similarly, in *Dahari* v. *State of U.P.*, while dwelling upon the issue of non-examination of material witnesses, it has been succinctly expressed that when the witness is not the only competent witness, who would have been fully capable of explaining the factual score correctly and the prosecution stood fully corroborated by the medical evidence and the testimony of other reliable witnesses, it would be inappropriate to draw an adverse inference against the prosecution."

49. Thus, it is held that merely because the investigating agnecy had not made seizure in presence of any independent witness, the prosecution case cannot be thrown overboard.

50. It is submitted by the Counsel for the appellants Vinod Verma and Mahendra Singh Chauhan, that as there is no evidence that the appellants had counterfeited the Stamp Papers or made any counterfeit stamp paper or sold any Counterfeit Govt. Stamp or had effaced any Govt. Stamp, therefore, their conviction under Sections 255,257,258 and 261 I.P.C. is bad. Considered the submissions made by the Counsel for the appellants. This Court has already come to a conclusion that the seizure of 7 and 5 counterfeit stamp papers from the possession of appellant Vinod Verma and Mahendra Singh Chauhan has been proved. Although the appellant Vinod Verma had appeared as a defence witness, but he has not explained as to how he came in possession of the counterfeit stamp papers. Similarly, the appellant Mahendra Singh Chauhan has failed to explain his possession of Counterfeit Stamp papers. Under these circumstances, it can be said that the appellants Vinod Verma and Mahendra Singh Chauhan had also committed offence under Sections 255,257,258 and 261 I.P.C.

Whether the stamp papers seized from the possession of Appellants Vinod Verma and Mahendra Singh Chauhan were Counterfeit Stamps or not?

51. Counterfeit Stamp Papers which are marked as Article 10 to 15 were seized from the possession of appellant Mahendra Singh Chauhan whereas Counterfeit Stamp Papers which are marked as Article A-19 to 25 were seized from the appellant Vinod Verma.

These counterfeit stamp papers were sent for examination. V.P. Kamlaskar (P.W.28), Chief Manager, Security Printing Press, Hyderabad has stated that the stamp papers were found to be fake/counterfeit. The report is Ex. P.39. Challenging the evidence of V.P. Kamlaskar (P.W.28), it is submitted by the Counsel for the appellants, that this witness has not clarified as to how he came to the conclusion that the stamp papers were counterfeit. He has tried to avoid the questions by saying that it is secret and cannot be disclosed. This witness has stated that the counterfeit stamp papers were examined by comparing with the original stamp papers, but declined to disclose the differences on the ground that the same is secret. It is submitted by the Counsel for the appellants that thus, the prosecution has failed to prove that the stamp papers seized from the possession of the appellants were counterfeit stamp papers. Considered the submissions made by the Counsel for the appellants. In para 5 of his cross-examination, this witness has admitted that he has not pointed out the differences between the original stamp papers and the counterfeit stamp papers. However, it was clarified by this witness on his own that since, the report is a secret report, therefore, the differences were not mentioned. In the considered opinion of this Court, the answer given by this witness was correct. In order to disclose the differences between the original stamp paper and the counterfeit stamp paper, this witness was required to explain in detail

about the security features of the original stamp papers, and according to this witness, the same is secret. Thus, this Court is of the considered opinion, that the report Ex. P.39 given by this witness, clearly establishes that the stamp papers seized from the possession of the appellants were counterfeit stamp papers.

Seizure of seal from the appellant Rakesh Garg

52. According to prosecution story, one seal was seized from the possession of appellant Rakesh Garg by seizure-memo Ex. P.20. The impression of the said seal was also affixed on the seizure-memo, Ex.P.20 and according to the impression, the said seal was of Asstt. Treasury Officer, Moti Mahal Treasury, Gwalior. Udai Pratap Singh (P.W.10) who is the seizure witness, has supported the prosecution story and has stated that Rakesh Garg was arrested by arrest memo Ex. P.19 and the seal, Article 36 was seized from his possession by seizure-memo, Ex. P.20. This witness was cross examined in detail, however, nothing could be elicited from this witness, which may make his evidence unreliable. It is submitted by the Counsel for the appellant, that the prosecution has not examined Bhagwanlal who was the another seizure witness, therefore, an adverse inference should be drawn against the prosecution, and secondly the seal was not sent for examination. Considered the submissions made by the Counsel for the appellant Rakesh Garg. Udai Pratap Singh (P.W.10) has supported the prosecution story in toto. It is well established principle of law

that it is the quality of the witness which matters and not the quantity. The Supreme Court in the case of **Yanob Sheikh Vs. State of W.B.** reported in **(2013) 6 SCC 428** has held as under :

> **"20.** We must notice at this stage that it is not always the quantity but the quality of the prosecution evidence that weighs with the court in determining the guilt of the accused or otherwise. The prosecution is under the responsibility of bringing its case beyond reasonable doubt and cannot escape that responsibility. In order to prove its case beyond reasonable doubt, the evidence produced by the prosecution has to be qualitative and may not be quantitative in nature. In *Namdeo* v. *State of Maharashtra*, the Court held as under: (SCC p. 161, para 28)
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> "*28.* From the aforesaid discussion, it is clear that Indian legal system does not insist on plurality of witnesses. Neither the legislature (Section 134 of the Evidence Act, 1872) nor the judiciary mandates that there must be particular number of witnesses to record an order of conviction against the accused. Our legal system has always laid emphasis on *value, weight* and *quality* of evidence rather than on *quantity, multiplicity* or *plurality* of witnesses. It is, therefore, open to a competent court to fully and completely rely on a solitary witness and record conviction. Conversely, it may acquit the accused in spite of testimony of several witnesses if it is not satisfied about the quality of evidence. The bald contention that no conviction can be recorded in case of a solitary eyewitness, therefore, has no force and must be negatived."
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> (emphasis in original)
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> **21.** Similarly, in *Bipin Kumar Mondal* v. *State of W.B.*, this Court took the view: (SCC p. 99, para 31)
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> "*31.* … In fact, it is not the number [and] quantity, but the quality that is

> material. The time-honoured principle is that evidence has to be weighed and not counted. The test is whether the evidence has a ring of truth, is cogent, credible and trustworthy [and reliable]."

53. Thus, this Court is of the considered opinion, that non-examination of another witness of seizure namely Bhagwanlal would not give any dent to the prosecution case.

54. It is submitted by the Counsel for the appellant Rakesh Garg, that since, the seal was not sent for examination, therefore, it cannot be held that a forged seal was seized from the possession of the appellant Rakesh Garg. However, during the course of argument, it was accepted, that the impression of seal was also taken on the seizure memo Ex. P/20 and it has also been accepted that the appellant Rakesh Garg, had no authority to keep the said official seal in his possession. He has not explained as to how, he came in possession of the said seal. Thus, it is held that the prosecution has succeeded in establishing that the seal of Asstt. Treasury Officer, Treasury Office, Moti Mahal, Gwalior was seized from the possession of the appellant Rakesh Garg.

Seizure of Register as well as evidence against the appellant Vinod Singh Yadav, Stamp Vendor

55. The appellant Vinod Singh Yadav, was undipustedly having license of Stamp Vendor and was carrying on his business in the High Court premises.

56. The allegations are that during verification, the registry of this Court got suspicious about some stamp papers, and therefore, an enquiry was got done from the Treasury Office, Gwalior and it was reported by the Treasury Office, that the stamp papers are fake. Accordingly, a request was made to the Collector, Gwalior to take action and in its turn, the office of Collector, Gwalior instructed the Superintendent of Police, Gwalior to take action and accordingly, F.I.R. was lodged.

57. 59 suspicious stamp papers were made available by the High Court to the investigating officer out of which 51 have been found to be counterfeit stamp papers. Poonam Soni (P.W.13) was declared hostile and in cross-examination by the Public Prosecutor, She has admitted that the stamp papers, Article 26 to Article 33 were purchased by her from Vinod Singh Yadav. It was also admitted by this witness that Vinod Singh Yadav is a stamp vendor and is doing business in the Court premises. The appellant was also identified by this witness in the dock. Thus, it is clear that the prosecution has succeeded in establishing the fact that counterfeit Stamp Papers Article 26 to Article 33 were sold by Vinod Singh Yadav. It was also admitted by this witness that counterfeit stamp papers i.e., Article 26 and Article 28 were filed in a Writ Petition (Pramesh Chaturvedi Vs. State of M.P.) and Article 27,29,30 were filed in a case of Sanjeev Dwivedi Vs. State of M.P. and Counterfeit stamp papers i.e., Article

31 to 33 were filed in the case of Krishna Gopal Sharma Vs. State of M.P. and all these cases were filed by the office of Shri M.P.S. Raghuvanshi. Neeraj Shrivastava (P.W.7), who is also a practicising lawyer, had admitted that counterfeit stamp paper, Article 34 was purchased by him, but he didnot disclose that from whom he had purchased the said stamp paper. He was declared hostile and in cross-examination by the Public Prosecutor, he admitted that the seal and signature of the stamp vendor has been affixed on the stamp paper. Further, it is clear from sale register, Article 6 seizued from the possession of the appellant Vinod Singh Yadav, there is a clear mention that a stamp papers were sold to Shri Neeraj Shrivastava, Advocate (PW-7).

58. Vide seizure-memo, Ex. P.8, 4 stamp papers, stamp sale register and license were seized from the possession of the appellant Vinod Singh Verma. The Stamp Sale Register, has been proved by Rakesh Shrivastava (P.W.4) and it is marked as Article A 6. In the said Stamp Sale Register, there is mention of certain serial No.s of the Stamp Papers which were sold to Poonam Soni. Thus, the evidence of Poonam Soni (P.W. 13) that stamp papers were purchased from the appellant Vinod Singh Yadav, finds full corroboration.

59. Thus, it is clear that not only the seizure of counterfeit stamp papers as well as seizure of seal from the possession of the appellants Vinod Verma and Mahendra Singh Chauhan has been proved by the

prosecution beyond reasonable doubt, but it has also been proved that the said stamp papers were counterfeit stamp papers. No explanation has been given by the appellants Vinod Verma and Mahendra Singh Chauhan, as to how they came in possession of the same. Similarly, Rakesh Garg has not given any explanation as to how he came in possession of the seal of Asstt. Treasury Officer. Similarly, the prosecution has succeeded in establishing beyond reasonable doubt that the appellant Vinod Singh Yadav, had sold the counterfeit stamp papers. Accordingly, this Court is of the considered opinion, that the prosecution has established the guilt of the appellants beyond reasonable doubt and accordingly, the appellant Rakesh Garg is held guilty of committing offence under Section 256 of I.P.C. and the appellants Mahendra Singh Chauhan, Vinod Verma and Vinod Singh Yadav are held guilty of committing offence under Sections 255, 256, 257, 258, 259, 261, 420 ,467, 468, 471,472 of I.P.C. and under Section 69 of Indian Stamp Paper Act read with Rule 39 of M.P Stamp Paper Rules.

60. So far as the question of sentence is concerned, this Court is of the view that the Trial Court has already adopted a very lenient view, because by counterfeiting the Govt. Stamp, the appellants have tried to weaken the Indian Economy. Accordingly, this Court is of the considered opinion, that the sentence awarded by the Trial Court does not call for any interference.

61. Resultantly, the Judgment and Sentence dated 22-12-2017 passed by VIIth A.S.J., Gwalior in Sessions Trial No. 195 of 2007 is hereby affirmed.

62. The appellants are in jail.

63. These appeals fail and are hereby **Dismissed.**

(G.S. Ahluwalia)
JUDGE
(10/05/2019)

Abhi